IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 2633/2005
(Suresh Kumar Acharya Vs. Industrial Tribunal & Labour Court, Udaipur & Anr.)

Date of Order : 21/03/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. S.K.Malik for petitioner-workman.
Mr. M.R.Singhvi for the respondent No.2-employer.

BY THE COURT:-

By the instant writ petition under Article 226 and 227 of the Constitution of India, the petitioner-workman has challenged the award Annex.P-1 dated 16.12.2004 passed by the respondent No.1 Industrial Disputes Tribunal and Labour Court, Udaipur (for short 'the Labour Court' hereinafter).

I have heard learned counsel for the parties and carefully gone through the award impugned dated 16.12.2004 Annex.P-1.

The facts and circumstances giving rise to the instant writ petition are that the Labour Department of the Central Government i.e. Union of India made a reference dated 25.8.1999 to the effect that "Whether the action of the management Bank of India in terminating service of Sh. Suresh

Kumar Acharya S/o Sh.Laxmanji, Ex. Daily rated employee w.e.f. 14.5.1997 is legal and justified ? If not, what relief the concerned workman is entitled to ? The Labour Court on receipt of the reference issued notices to the parties. The petitioner workman filed statement of claim and the respondent employer filed a written statement. Considering the material placed before it, the Labour Court held that before retrenchment of the services of the petitioner workman, he had completed 240 days in one calender year and his termination was without notice or payment in lieu of notice and therefore, the retrenchment of the petitioner workman is in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the ID Act' hereinafter). However, instead of granting relief of reinstatement, the Labour Court held that the petitioner workman was engaged by oral order for urgent need and his services have been terminated on availability of the regularly recruited employee as per the Rules and therefore, awarded compensation of Rs. 10,000/- in favour of the workman in lieu of reinstatement. Aggrieved by the award impugned, to the extent of declining to grant him the relief of reinstatement, the petitioner workman has filed the instant writ petition.

It is contended by learned counsel for the petitioner that when the Labour Court came to the conclusion that the retrenchment/ termination of the service of the petitioner was in

violation of the provisions of Section 25-F of the I.D. Act, then the relief of reinstatement with continuity of service ought to have been granted and not the payment of compensation. He has relied on decision of Hon'ble Supreme Court in Pyare Lal Vs. Karnataka Electricity Board, 2002 (10) SCC 422 wherein Hon'ble Supreme Court held that the Court usually considers the case of payment of lump sum compensation instead of directing reinstatement and back wages when it appears that the employer has lost trust and confidence in the employee for some misconduct on the part of the employee. But this is not one of such cases and, therefore, taking into consideration the young age of the employees, it may not be proper to direct payment of compensation in lieu of the reinstatement.

Learned counsel for the respondent submits that the workman himself has admitted that he has not been engaged on regularly sanctioned post by inviting the eligible persons to apply, but he was engaged by an oral order and he did not apply for the post. He was sent by Regional Manager to work at Chittore. However, on arrival of the regular employee, his services were terminated. He also admitted that there is only one post and that has been filled by a regularly appointed employee.

In State of M.P.and Others Vs. Arjunlal Rajak (2006) 2 SCC 711, Hon'ble Supreme Court held that it is beyond

any doubt or dispute that a daily-wager does not hold a post. The Forest Department is a wing of the State. Its employees hold a status. For acquiring that status and for obtaining the constitutional protection in terms of Article 311 of the Constitution, all appointments must be made in conformity with the constitutional scheme as laid down under Articles 14 and 16 of the Constitution as well as the rules made in terms of the proviso to Article 309 of the Constitution or in terms of a legislative Act. Concededly, while appointing the respondent, the constitutional provision or the statutory provisions had not been followed. The rights and liabilities of the parties are, therefore, governed by the terms of the contract and/or the provisions of the statute applicable in relation thereto. The respondent was not given any offer of appointment in writing. He admittedly worked in different departments of the State. His last posting was in the production division of the Forest Department in the district of Guna which stood abolished. It is however, true that while terminating the services of the respondent, the appellants had not complied with the mandatory requirements of Section 25-F of the Industrial Disputes Act, and thus, ordinarily, the workman could have been directed to be reinstated with or without back wages, but it is also well settled that when a project or a scheme or an office itself is abolished relief by way of reinstatement is not granted. Accordingly, keeping in view the

fact that the services of the respondent therein were terminated on the ground that the production unit in which he was working itself had been closed, the Hon'ble Supreme Court awarded monetary compensation of Rs. 10,000/- to the workman.

In Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. And Others, (2006) 5 SCC 127, Hon'ble Supreme Court finding the appointment of the workman therein in violation of the U.P. Mahapalika Adhiniyam, 1959, held that since the provisions of the U.P. Industrial Dispute Act, 1947 had not been complied with, instead and in place of issuing a direction for reinstatement of service, interests of justice would be subserved if a compensation of Rs. 30,000/- is directed to be paid.

A Division Bench of this Court in State of Rajasthan & Ors. Vs. Rashid Mohammad 2004 (5) WLC (Raj.) 463 while dealing with a case where the respondent Rashid Mohammad was appointed as a Guard on daily wages basis on 01.2.1990 and was finally removed on 17.5.1994 and taking into consideration the facts that already nine years have elapsed, modified the judgment of the learned Single Judge by directing that instead of reinstatement, the petitioner would be entitled to a lump sum amount of Rs. 50,000/- as compensation for full and final settlement of all his claims while relying on the decisions of Hon'ble Supreme Court in Hindustan Tin Works Pvt. Ltd. Vs.

Employees of Hindustan Tin Works Pvt. Ltd. AIR 1979 SC 95, Chandu Lal Vs. The Management of M/s PAN American World Airways, AIR, 1985 SC 1128, Gujarat State Road Transport Corporation & Anr. Vs. Malu Amra, AIR 1994 SC 112, Sain Steel Products Vs. Naipal Singh and Ors. AIR 2001 SCW 2426, O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd. and Ors. (1986) 4 SCC 337 and Rolston Johan Vs. Central Government Industrial Tribunal and Labour Court and Ors. AIR 1994 SC 131.

In the instant case, from the statement of the petitioner workman and the material on record, it is clear that the petitioner was engaged on urgent need by an oral order and there being only one sanctioned post which has been filled by a regularly appointed employee and therefore, the services of the petitioner were terminated. In the circumstances, therefore, the labour court was justified in declining to grant relief of reinstatement as there is only one post which is ment and filled-up by regularly appointed person, whereas the petitioner has not undergone the regular selection process, on the contrary, without even applying in writing, he was engaged to meet the urgent requirement on daily rated basis and as such the engagement of the petitioner workman itself was dehors the rules. However, in the facts and circumstances of the case and looking to the length of services rendered by the workman, in

my view, the compensation awarded by the tribunal appears to be much on lower side and therefore, it deserves to be enhanced from Rs. 10,000/- to Rs. 60,000/-.

In view of the aforesaid discussion and keeping in view the decisions of Hon'ble Supreme Court referred herein above, the writ petition filed by the workman is partly allowed and the impugned award dated 16.12.2004 is modified to the extent that the compensation awarded by the tribunal is enhanced from Rs.10,000/- to Rs. 60000/-. There shall be no order as to costs.

(H.R.PANWAR),J.

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